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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,676	06/21/2001	Shoichi Sasaki	039628.99	6776

25944 7590 03/22/2004

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EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/885,676

Applicant(s)

SASAKI, SHOICHI

Examiner

Marlon T Fletcher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-9, 11, 14, 16, 17, 19, 21, 24 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10, 15, 18, 20, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 08/885,116.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amended to the claims are non-compliant as set forth in 37 CFR 1.173 (g). Any amendment made to the claims must be based on the original claims of the patent. Although, the claims are non-compliant, the examiner has examined and responded to the amendments made. However, the amendments must be in proper format in order to be considered as a bona fide amendment. Any future amendments must be proper or they will not be considered.
2. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It was not executed in accordance with either 37 CFR 1.66 or 1.68.

The declaration was not signed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 10, 12, 13, 15, 18, 20, 22, and 23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al. (5,287,772) in view of Schmidt (5,558,588).

Aoki et al. disclose a power output apparatus for outputting power to a drive shaft, said power output apparatus comprising: an engine having an output shaft (column 6, line 67 through column 7, line 8); a motor (2) having a rotating shaft and inputting and outputting power to and from said rotating shaft; three shaft-type power input/output (figure 1) having three shafts respectively linking said engine and said drive shaft (5) said three shaft-type power input/output means inputting and outputting power to and from a residual one shaft, based on predetermined powers input to an output any two shafts among said three shafts (column 4, lines 50-54); storage means (1) for supplying and receiving an electrical energy required for inputting and outputting power to and from the motor; and braking control means (7) for controlling said engine and said motor, based on a charging state of the storage battery means in order to enable a braking force to be applied to the drive shaft, wherein the braking control means comprises means for enabling said motor to carry out a power operation, thereby applying a braking force to said drive shaft (column 3, lines 47-55; column 4, lines 50-54; and column 6, line 61 through column 7, line 19).

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Aoki et al. further disclose a remaining charge detection means that detects the remaining charge of the storage battery means (column 8, line 64 through column 9, line 13); and an engine driving means that drives said engine in a predetermined operating condition, which enables said motor to regenerate electric power, when the remaining charge of the battery is less than a predetermined threshold value (column 18, line 56 through column 19, line 21).

The three shaft-type power input/output means of Aoki et al. is not identical to that of the applicant, although at least three shafts are inherently present. Aoki et al. do not disclose a first and second motor.

However, Schmidt (5,558,588) discloses a three shaft-type power input/output means having three shafts, as disclosed by the applicant (figures 10 and 11). Schmidt disclose first (720) and second (722) motors, ECU (728), storage means (726); wherein the storage means (726) supplies and receives electrical for inputting and outputting power from the second motor (column 33, lines 14-33); and braking control means for controlling the engine, first motor, and second motor in order to enable braking force to be applied to the drive shaft (column 20, lines 6-13). Schmidt further discloses output shaft (718); an input shaft (712); and a rotating shaft (739 or 740).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Schmidt with the apparatus of Aoki et al., because the teachings allow braking to be controlled for two motors, wherein the driving shafts are controlled, wherein the combination through the teachings of

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Aoki et al. provide controlling the braking based on a charging state of the battery.

Allowable Subject Matter

6. Claims 7-9, 11, 14, 16, 17, 19, 21, 24, and 25, are allowed.

Response to Arguments

7. Applicant's arguments filed 10/23/2003 have been fully considered but they are not persuasive. The applicant believes that the amended claims now define over the previously made rejections. However, the examiner does not agree. As pointed out in the above office action, Schmidt meets the newly added claim limitations. For this reason, the rejection is maintained.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

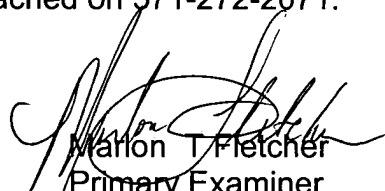
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 571-272-2071.


Marlon T Fletcher
Primary Examiner
Art Unit 2837

MTF
March 17, 2004